



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: DECEMBER 02, 2022

IN THE MATTER OF:

Appeal Board No. 624871

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 625868 and 625869, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed July 14, 2022, which overruled the initial determinations holding the claimant ineligible to receive benefits, effective February 24, 2020 through March 1, 2020 and effective February 15, 2021 through February 21, 2021 on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification.

In Appeal Board Nos. 625870 and 624871, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed July 14, 2022, which overruled the initial determinations holding the claimant ineligible to receive benefits, effective March 2, 2020 through March 8, 2020, March 22, 2021 through April 11, 2021, and April 26, 2021 through May 2, 2021, on the basis that the claimant did not comply with registration requirements.

At the combined telephone conference hearings before the Administrative Law Judge, testimony was taken. There was an appearance by the claimant.

The Board considered the arguments contained in the written statement submitted on behalf of the

Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the Commissioner of Labor contends that the claimant's testimony is inconsistent and contradicts his statement made on May 17, 2022,

a document not in evidence. In addition, the Commissioner of Labor contends that the claimant's testimony regarding the number of calls he placed to the Department of Labor is not accurate. The Board has determined to provide the Commissioner of Labor an opportunity to appear and provide testimony and evidence in this matter.

The Commissioner of Labor should be represented at the remand hearing and should produce a witness to provide testimony further about the Call History Report. In this regard, the parties shall be confronted with the key to the Call History Lookup report key, pages 16 through 18 in the 47-page packet for the July 12, 2022 hearing, which shall be made part of the record. The claimant should have the opportunity to obtain and produce his phone records for February and March 2020, as well as February 2021 through May 2021. If he is unable to obtain his telephone records from any companies, the claimant shall contact the Hearing Section to request a subpoena for their production. The claimant should be confronted with his Summary of Statement dated May 17, 2022. He should also be questioned about the reason for his telephone calls to the Department of Labor and any efforts he made to certify by internet.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER